ABDUL HAI BIN HAJI MASUD AHMAD *a*

v.

KWANG YUET SONG

COURT OF APPEAL, KUALA LUMPUR
DATO' N.H. CHAN JCA *b*
DATO' ABU MANSOR ALI JCA
DATO' ABDUL MALEK AHMAD JCA
[CIVIL APPEAL NO. P-04-9-95]
2 MAY 1996

LANDLORD & TENANT: *Rent controlled premises - Vacant possession - Tenant ordered to vacate possession - Whether order proper - Whether tenancy was for a fixed term - Whether tenant a contractual tenant who was no longer such after expiry of tenancy - Control of Rent Act 1966 s. 16 - Applicability.* *c*

This was an appeal against the judgment of the learned Judge for dismissing the appellant's claim for possession of a certain premises. It was not in dispute that the said premises was at the material time subject to the Control of Rent Act 1966, that the respondent was the owner thereof, that the appellant was let into possession under a duly registered lease, and that, upon executing the lease the appellant paid the respondent some RM10,000 as consideration for the latter giving *"the tenancy for a long period"* . *d* *e*

In ordering vacant possession thus, the trial Judge *inter alia* ruled that the RM10,000 was in fact consideration for the respondent agreeing to bind herself to a fixed term tenancy of 10 years, and that the appellant was therefore a contractual tenant who was no longer such after the expiry of the tenancy. In this appeal, Counsel for the appellant argued that the appellant was a tenant holding under a controlled tenancy, and as such, possession could only be given to the respondent in the several instances as enumerated in s. 16 of the Act. It was Counsel's contention that the requirements of s.16 in this case had not been fulfilled, and the learned Judge was therefore wrong in dismissing the appellant's claim for possession. Before the learned appeal Judges, the main question that arose was whether at the time of the order of possession the appellant had any tenancy to be protected. *f* *g*

Held: *h*

Per Abu Mansor Ali JCA (delivering the judgment of the Court):

[1] The learned trial Judge had made a correct finding. His finding that the tenancy was only for a period of 10 years was a finding for which due reasons were given. It is trite law that the learned Judge was entitled to make such finding after seeing and hearing the witnesses. In the circumstances this Court must reject the appellant's appeal on this ground *i*

and must hold that at the time of the order of possession the tenant had no tenancy to be protected.

[2] In evicting the appellant the respondent had not relied on s. 16 of the Act. The reason being that the tenancy was for a period of 10 years and it had come to an end. The statutory protection of s. 16 could only be relied upon by the appellant if there was a tenancy. There was no such tenancy here as the respondent had made no promise for renewal and had in fact consistently refused to accept rent when the appellant tried to pay.

[Appeal dismissed]

***[Bahasa Malaysia** Translation of Headnotes]*

***TUAN TANAH & PENYEWA:** Premis sewa terkawal - Milikan kosong - Penyewa diarah mengosongkan premis - Samada perintah wajar - Samada sewaan adalah bagi satu tempoh yang tetap - Samada penyewa merupakan penyewa kontraktual yang tidak menjadi sedemikian selepas luputnya tempoh sewaan - Akta Kawalan Sewaan 1966 s. 16 - Kepemakaian.*

Ini adalah satu rayuan terhadap penghakiman Hakim yang bijaksana kerana menolak tuntutan perayu bagi pemilikan suatu premis. Ianya tidak dipertikaikan bahawa premis tersebut adalah pada waktu yang material tertakluk kepada Akta Kawalan Sewaan 1966, bahawa responden merupakan tuanpunya bagi premis itu, bahawa perayu telah diberikan pemilikan sewaan di bawah satu pajakan yang telah didaftarkan, dan bahawa, setelah menyempurnakan pajakan tersebut perayu telah membayar responden tersebut satu jumlah sebanyak RM10,000 sebagai balasan bagi pihak yang terkemudian memberikan "sewaan tersebut bagi tempoh yang panjang".

Dalam memerintahkan milikan kosong, Hakim perbicaraan antara lainnya memutuskan bahawa RM10,000 tersebut adalah pada hakikatnya balasan bagi responden menyetujui untuk mengikat dirinya pada satu tempoh sewaan yang tetap selama 10 tahun, dan bahawa perayu adalah dengan itu merupakan seorang penyewa kontraktual yang tidak lagi menjadi sedemikian selepas luput tempoh sewaan tersebut. Dalam rayuan ini, Peguam bagi pihak perayu telah berhujah bahawa perayu adalah penyewa yang memegang sewaan di bawah satu sewaan terkawal, dan oleh yang demikian, milikan hanya boleh diberikan kepada responden dalam beberapa keadaan sepertimana yang dinyatakan satu persatu dalam s. 16 Akta tersebut. Ianya merupakan penegasan Peguam bahawa kehendak-kehendak s. 16 dalam kes ini telah tidak dipenuhi, dan Hakim yang bijaksana dengan itu adalah salah dalam menolak tuntutan perayu untuk milikan. Di hadapan Hakim rayuan yang bijaksana, persoalan utama yang berbangkit adalah samada pada waktu perintah milikan, perayu mempunyai apa-apa sewaan untuk dilindungi.

Diputuskan:

Oleh Abu Mansor Ali, HMR (menyampaikan penghakiman Mahkamah):

[1] Hakim yang bijaksana telah membuat keputusan yang betul. Keputusan beliau bahawa sewaan tersebut adalah hanya bagi tempoh selama 10 tahun merupakan satu keputusan bagi yang mana alasan yang wajar telah diberikan. Ianya merupakan undang-undang trite bahawa Hakim yang bijaksana berhak untuk membuat keputusan yang sedemikian selepas melihat dan mendengar saksi. Dalam keadaan yang sedemikian Mahkamah ini mestilah menolak rayuan perayu atas alasan ini dan mesti memutuskan bahawa pada waktu perintah pemilikan, penyewa tidak mempunyai sewaan untuk dilindungi.

[2] Dalam mengusir perayu, responden telah tidak bergantung pada s. 16 Akta. Alasannya adalah bahawa sewaan tersebut adalah bagi tempoh selama 10 tahun dan ianya telah pun luput. Perayu hanya boleh bergantung pada perlindungan berkanun s. 16 jika terdapat sewaan. Tidak terdapat sewaan di sini kerana responden tidak membuat apa-apa janji untuk pembaharuan dan telah pada hakikatnya secara konsisten menolak untuk menerima sewaan apabila perayu cuba untuk membayar.

[Rayuan ditolak]

Cases referred to:
Wong Miew Choong v. Loh Fatt [1961] 27 MLJ 219 ***(refd)***

Legislation referred to:
Control of Rent Act 1966, ss. 10(1), 16(a)

For the appellant - R.J. Manecksha (Sharma with him); M/s. Ong & Manecksha
For the respondent - Petra Oon; M/s. Lim, Lim & Oon

JUDGMENT

Abu Mansor Ali JCA:

The appellant/plaintiff appealed against the decision of the Penang High Court Judge, Mr. Vincent Ng Kim Khoay given on the 3 October 1994 wherein he dismissed the appelant's claim for possession. After hearing arguments we upheld the learned Judge's decision and dismissed their appeal on 12 December 1995. The appellant now appeals against that said dismissal.

The undisputed facts of this case are as follows:

(1) The respondent is the registered owner of Lot 815, Mukim 10, Seberang Perai Tengah, Penang, upon which stands premises No. 14, Straight Street, Bukit Mertajam;

(2) The said premises are subject to the provisions of the Control of Rent Act, 1966 (hereinafter "the Act");

(3) The appellant was in occupation of the premises and was let into possession on or about 1 November 1969, under a lease registered pursuant to s. 221, National Land Code, 1965, as the tenancy was for more than 3 years;

(4) At the time the lease was entered into, the appellant paid the respondent RM10,000 as "consideration of giving the plaintiff (appellant) the tenancy for a long period".

Mr. R.J. Manecksha, Counsel for the appellant, in his first ground of appeal, contended that the learned trial Judge erred in failing to take into account the fact that the payment of premium of RM10,000 by the appellant to the respondent, as a consideration for the respondent leasing the premises, was in breach of s. 10(1) of the Act rendering the tenancy void and unenforceable giving the appellant all security of tenure without limitation of the length of the tenancy.

Mr. Manecksha further submitted that it was convenient for him to take ground 2 and ground 3 together. In ground 2 of the petition of appeal he contended that:

(2) The learned Judge further erred in arriving at his finding that a contractual tenant who is no longer such after the contractual tenancy is obliged to give up vacant possession of premises when in fact the position is that upon the expiry or determination of the contractual tenancy, the tenant is protected by virtue of the provisions of the Control of rent Act, 1966, and cannot be evicted unless one of the grounds in s. 16 of the Act is complied with.

Then in ground 3 he contended as follows:

(3) The learned Judge was wrong in holding that the appellant "is clearly estopped by contract from claiming that the actual term that he had agreed to" as the doctrine of estoppel cannot be invoked by the parties to defeat the provisions of the Control of Rent Act, 1966, if it is established that the tenant is entitled to protection.

The crux of appellant's Counsel's submission was that since the appellant was a tenant holding under a controlled tenancy possession could only be given to the landlord respondent in the several cases enumerated in the circumstances given in s. 16(a) to (e) of the Act. Equally important was that before the landlord could exercise his right to evict a controlled tenant under the said s. 16 of the Act, he would need to give the appellant one year's notice and he alleged this was not done. He therefore submitted the learned Judge erred in giving possession when the respondent had not fulfilled the requirement of or prerequisite of s. 16 of the Act. The learned Counsel cited the case of *Wong*

Miew Choong v. Loh Fatt [1961] 27 MLJ 219 at 220 where the learned Judge Ong (as he then was) held:

> The contract in force, therefore, at all material times as between the appellant and his sub-tenant was one which brings the case well within the four corner of paragraph (j).
>
> It is wrong to say, where merely a remedy is withheld, that no cause of action, arises until a landlord can establish a case under any of the paragraphs (a) to (j). The correct statement of the law, in my opinion, is that, notwithstanding that he may bring an action for possession after proper termination of a tenancy, the Ordinance merely says that even so "no order or judgment for recovery of possession shall be made or given" except in the special circumstances set out.
>
> The Control of Rent Ordinance therefore merely operates as a fetter on the exercise of the common law rights of a landlord. Such being the case, ant statutory invasion of or interference with private rights ought to be strictly contrued.

Counsel for the respondent, Miss Oon, in reply, however, contended that the learned Judge had made a correct finding of fact were he held at page 44 and page 45 of the Record of Appeal:

> In the event, on the evidence I had before me and on the balance of probabilities I find that neither on 6 August 1969 nor at any time thereafter did the defendant make any oral promise to grant the plaintiff any term of lease that was in excess of the terms stated in the written agreement and P4.
>
> I further find that the RM10,000 paid by the plaintiff to the defendant, was paid, not as a deposit but as a consideration for the defendant agreeing to bind herself to a fixed term tenancy of 10 years, at a constant rental which was registered against her title. This must have been so, because the plaintiff himself had testified that "I did not want her to let it out to others ... I needed it badly." At any rate, this question of whether RM10,000 paid to the defendant was a refundable deposit or a consideration, was a non-issue as the plaintiff in his pleadings did not claim the refund of same.

We upheld the submission of Counsel for the respondent that the learned trial Judge had made a correct finding. He found that tenancy was only for 10 years and he duly gave his reasons before arriving at that finding. It is trite law he is entitled to make such finding after seeing and hearing the witnesses and we find that we could not lightly disagree with it. We therefore reject the appellant's appeal on this ground and held that at the time of the order of possession the tenant had no tenancy to be protected.

We also found merit in the Counsel for the respondent's argument that the respondent was not relying on s. 16 of the Act in order to evict the appellant, the reason being that the tenancy was a definite period of 10 years and it had come to an end. The statutory protection of s. 16 of the Act could only have been relied upon by the appellant if there was a tenancy and in this

case, as already found by the learned trial Judge, the respondent had made no promise for renewal and had in fact, as found by him, consistently refused to accept rent when the appellant tried to pay.

We agree fully with the finding of the learned Judge, as stated in his grounds of judgment, that the appellant's claim be rejected. There was no case of the learned Judge below decontrolling the tenancy. This being our finding, we therefore dismissed the appeal with costs, the deposit to account of taxed costs.

Reported by W.A. Sharif